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January 10, 2002
OFFICE OF THE
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VIA HAND DELIVERY

David Waddell, Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37238

Re: *Docket to Determine the Compliance of BellSouth
Telecommunications, Inc.'s Operations Support Systems with State
and Federal Regulations*
Docket No. 01-00362

Dear Mr. Waddell:

Enclosed are the original and thirteen copies of BellSouth's Proposed Revised Phase II Issues. Copies of the enclosed are being provided to counsel of record.

Very truly yours,

Guy M. Hicks

GMH:ch
Enclosure

**BEFORE THE TENNESSEE REGULATORY AUTHORITY
Nashville, Tennessee**

In Re: *Docket to Determine the Compliance of BellSouth Telecommunications, Inc.'s Operations Support Systems with State and Federal Regulations*

Docket No. 01-00362

**BELLSOUTH TELECOMMUNICATIONS, INC.'S
PROPOSED REVISED PHASE II ISSUES**

BellSouth Telecommunications, Inc. ("BellSouth") hereby files its proposed revised Phase II issues in the above-referenced docket, set forth as Attachment A hereto, and states as follows:

In its Section 271 jurisprudence, the FCC has set forth a clear road map to assess a BOC's compliance with Checklist Item ii. Specifically, the FCC set forth a two-step approach. First, the FCC determines "whether the BOC has deployed the necessary systems and personnel to provide sufficient access to each of the necessary OSS functions and whether the BOC is adequately assisting competing carriers to understand how to implement and use all of the OSS functions available to them." *Bell Atlantic-New York Order*, ¶87; *SWBT-Texas Order*, ¶96. Under the first inquiry, "a BOC must demonstrate that it has developed sufficient electronic (for functions that the BOC accesses electronically) and manual interfaces to allow competing carriers equivalent access to all of the necessary OSS functions." *SWBT-Texas Order*, ¶97. Under the second inquiry, the FCC will "examine

performance measurements and other evidence of commercial readiness to ascertain whether the BOC's OSS is handling current demand and will be able to handle reasonably foreseeable future volumes." *SWBT-Texas Order*, ¶97; *Bell Atlantic-New York Order*, ¶89.

The FCC then established a hierarchy of proof applicable to the second inquiry. It is this hierarchy of proof that is relevant to Phase II of this proceeding and which BellSouth has captured in its proposed Revised Issues. First, the FCC held that "the most probative evidence that OSS functions are operationally ready is actual commercial usage." *SWBT-Texas Order*, ¶98. The FCC then held that "absent sufficient and reliable data on commercial usage the Commission will consider the results of carrier-to-carrier testing, independent third party testing, and internal testing in assessing the commercial readiness of a BOC's OSS." *Id.*

A. BELLSOUTH'S PROPOSED REVISED ISSUES

BellSouth has revised the previously approved issues (1) to track explicitly the FCC's hierarchy of proof; (2) to conform to the evidence presented in Phase I of this proceeding; and (3) to insure that if the TRA intended to address and resolve Checklist Item ii in this proceeding, that there was a specific issue that addressed the matter. The purpose of BellSouth's revisions is to clarify the issues to be presented to the Authority and to give the Authority the opportunity to further define the scope of the proceeding. Assuming that the Authority intends to resolve Checklist Item ii in this proceeding, BellSouth's revision of the original issues list is not intended to preclude the presentation of any arguments, but rather

to state the issues plainly and in a straightforward manner so that there would be no doubt as to the way BellSouth would be required to present its evidence.

BellSouth's revised issues 1-6 explicitly address the four levels of proof (commercial usage, carrier-to-carrier testing, third party testing and internal testing) set forth by the FCC. These issues will provide a framework for the parties clearly to address each type of proof and will allow the Authority, in a clear and concise manner, to evaluate the sufficiency of the evidence BellSouth presents. Based on the responses to these issues, the Authority can make an informed decision as to whether it needs additional third party testing to assess BellSouth's compliance with Checklist Item ii. For instance, the FCC has looked, in other 271 proceedings, at the question of whether the incumbent telephone company was providing nondiscriminatory access to preordering functions. In this proceeding, the Authority, under BellSouth Revised Issue 1, will look at whether there is commercial usage in Tennessee sufficient to assess whether BellSouth is allowing nondiscriminatory access to preordering functionality. If everybody agrees that there is not enough commercial usage, then, if BellSouth's systems are regional, the Authority could look at commercial usage from other states and so forth.

BellSouth's revised issues do not limit or prevent AT&T from presenting its case in opposition to BellSouth's. For instance, assume that BellSouth asserts that it has commercial usage sufficient to demonstrate that it is providing access to preordering functions on a non-discriminatory basis. BellSouth's revised issues allow AT&T to argue that there was no commercial usage, or not enough

commercial usage, and to argue that third party testing is necessary to demonstrate that BellSouth is in fact providing non-discriminatory access to preordering functionalities.

In the same vein, the BellSouth Revised Issues afford parties the opportunity to comment on the reliability of the Georgia and/or Florida Third Party Tests. BellSouth Revised Issue 5 gives the Intervenors broad leeway to address the reliability of the Georgia and/or Florida third party OSS tests in responding to the question of whether "the Authority [can] rely on the results of third party testing." Furthermore, BellSouth Revised Issue 7 affords parties the opportunity to discuss the scope of the Georgia and/or Florida tests and to argue whether or not Tennessee needs to conduct additional third party testing of its own.

BellSouth restated the issues and did omit the issues that asked the parties to discuss and compare the Florida and Georgia third party tests and to opine as to why one commission went one way and the other made a different decision. BellSouth did so for a very good reason. Assume that there is no commercial usage related to preordering functions in Tennessee, or in the region as a whole. Assume that the Georgia third party test did not examine access to preordering functions, but the Florida third party test did. If BellSouth needed to rely on third party testing to prove its case, and Georgia had not included this item in its test, then there would be nothing for BellSouth to rely upon, unless it chose to rely on the Florida test. Similarly, if the Georgia commission included an item in its third party test and Florida did not, again, what difference would it make to the outcome

of an investigation into whether BellSouth was providing non-discriminatory access to its loops? The real issue is whether, for any particular issue that the FCC wants addressed, there is commercial usage, carrier-to-carrier testing, third party testing or internal testing. If there is no such commercial usage, or carrier-to-carrier testing, and the issue is not included in the existing third party tests, then the Authority would have a decision about whether to order its own third party test to assess the particular issue. In such a case, what the Georgia or Florida commissions did, and why they did it, would simply be irrelevant to the resolution of the dispute.

BellSouth submits proposed Revised Issue 8 to give the Authority the opportunity to decide explicitly whether it will address the ultimate question of BellSouth's compliance with Checklist Item ii in Phase II of this docket or in the Section 271 proceeding.¹ BellSouth does not have a position as to where this issue should be heard. BellSouth does contend, however, that the issue of BellSouth's compliance with Checklist Item ii should only be heard one time, in one docket, and that BellSouth have the opportunity to present its full case on that issue in one docket or the other.

The BellSouth proposed issues are designed only to clarify and consolidate the Phase II issues already approved by the Authority. For example, Authority Issues 1 and 2 are subsumed in BellSouth Revised Issues 1-3. BellSouth added

¹ BellSouth's evidence of its compliance with Checklist Item ii was stricken from Phase I of this proceeding on the basis that it related to Phase II. *See Order Resolving Procedural Motions*, entered November 14, 2001, at pp. 18-19. Moreover, as BellSouth noted during the prehearing conference, currently there is no evidence on BellSouth's compliance with Checklist Item ii on file in either this docket or the Section 271 docket. If the Authority decides to hear this issue in the Section 271 proceeding, the relevant testimony will need to be filed in that proceeding.

Checklist Item ii will be heard in Phase II of this proceeding or in the Section 271 proceeding. Should the Authority decide to address BellSouth's compliance with Checklist Item ii in Phase II of this proceeding, BellSouth requests that the Authority adopt BellSouth Revised Issue 8.

B. THE PREHEARING OFFICER'S PROPOSED ADDITIONAL ISSUES

At the Prehearing Conference on January 8, 2002, the Prehearing Officer proposed the following additional issues for Phase II of this proceeding:

- (1) What definition(s) of measurable commercial usage should the Authority use for purposes of this docket?
- (2) If data will be used in lieu of the third party test, should such data be:
 - Tennessee-specific; and/or
 - By service or process; and/or
 - From any particular time period?

BellSouth has no objection to the first issue. In response to this issue, BellSouth states that the FCC has never defined "measurable commercial usage" specifically. Rather, the FCC has reviewed commercial usage based on the totality of the circumstances. Thus, the Authority need not define commercial usage. If the Authority does adopt a threshold, BellSouth proposes a threshold of 30 units (subject to modification based on the measure, i.e. collocation) which is generally considered statistically significant. With respect to the second issue, while BellSouth does not object to the issue, BellSouth does note, as discussed at the

prehearing conference, that the issue presents a threshold question for the Authority's consideration. Specifically, the question before the Authority is what data it will rely upon to assess (a) whether commercial usage exists; and, if it is addressed in this docket (b) whether BellSouth is providing nondiscriminatory access to OSS.² BellSouth will ask the Authority to rely on its Monthly State Summary ("MSS") based on the performance measurements adopted in Georgia for purposes of assessing BellSouth's compliance with Section 271. The MSS, which consists of over 2,000 submetrics, provides the Authority with more than enough data to assess BellSouth's compliance with the requirements of the Act.³ Moreover, the MSS is the set of performance measurements upon which BellSouth will rely in its Georgia and Louisiana applications with the FCC.⁴ If the Authority decides to rely on a different set of measures, or different benchmarks or retail analogues, there will be a significant delay in the prosecution of this proceeding which could be as much as 12 months. Thus, the resolution of this issue dictates the timeframe in which the Authority will be able to complete this docket.

² Importantly, the MSS contains usage data that can be used to determine whether commercial volumes exist. BellSouth would note that this is not a situation where BellSouth will provide evidence of commercial usage in all 2200 categories reported in the MSS. The examination required by the FCC is whether BellSouth is providing non-discriminatory access to identified OSS "functions". The commercial usage related to those functions can be gathered from the various categories reported on the MSS.

³ BST has previously offered to implement the Georgia SQM in Tennessee. This Plan is the basis of BST's MSS filing and, as noted above, provides more than sufficient data to assess BellSouth's compliance with the Act. If the Authority adopts BellSouth's MSS, based on the Georgia SQM, as BellSouth proposes, BellSouth will agree to implement the Revised SEEM "penalty" plan currently in effect in Georgia in Tennessee. This not only would comply with the Act but would provide readily available performance measurements and penalties.

⁴ The MSS was adopted by Kentucky, South Carolina, and Mississippi as well for purposes of assessing BellSouth's compliance with Section 271.

C. MISCELLANEOUS ISSUES

At the Prehearing Conference, several miscellaneous issues were raised that BellSouth will address briefly.

First, while BellSouth will make Mr. Lattimore of PricewaterhouseCoopers available if the Authority requests, the PriceWaterhouse Coopers ("PWC") Regionality Attestation is not relevant to Phase II of this proceeding. The Attestation, as Mr. Lattimore explained, dealt exclusively with the regionality of BellSouth's OSS. That issue was fully addressed in Phase I and will not be revisited in Phase II. Moreover, PWC had no involvement in either the Georgia or the Florida Third Party OSS Tests. Consequently, BellSouth requests that PWC not be asked to participate in Phase II.

Second, as addressed above, BellSouth contends that the Authority need not complete its performance measurements docket in order to move forward on its assessment of BellSouth's compliance with the Act provided that the Authority adopts (or will consider adopting) BellSouth's MSS⁵ for purposes of this proceeding and its 271 proceeding. If, on the other hand, the Authority's position is that the performance measurements docket must be decided and implemented, this could, depending on the magnitude of the changes, necessitate a delay in this proceeding of at least 6-8 months, and possibly as much as 12 months. This delay would be substantial, and is unnecessary.

⁵ Adopting BellSouth's MSS allows the Authority to move forward expeditiously in this docket while addressing and complying with the issues of a performance measurements docket.

Finally, counsel for AT&T contended that the Authority should wait on the conclusion of the Florida test before proceeding with this docket. As explained at the Prehearing Conference, BellSouth will rely on commercial usage, carrier-to-carrier testing, the Georgia Third Party test and internal BellSouth testing to make its case. There is no need for the Authority to wait until the conclusion of the Florida test to proceed with this docket. BellSouth contends that it will meet its burden of proof without reliance on the Florida test. If that assessment turns out to be incorrect, BellSouth will bear the burden of that decision.

WHEREFORE, BellSouth respectfully requests that the Authority grant the relief requested herein.

Respectfully submitted,

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1. For those processes, systems or procedures for which Tennessee specific data exists, does commercial usage exist in sufficient volumes to allow the Authority to determine if access to the processes, systems or procedures is being provided in a non-discriminatory manner.
2. For those processes, systems or procedures for which data is only collected on a region-wide basis, does region-wide commercial usage exist in sufficient volumes to allow the Authority to determine if access to the processes, systems or procedures is being provided in a non-discriminatory manner?
3. For those processes, systems or procedures for which sufficient Tennessee specific data does not exist, but where the Authority has found that the processes, systems or procedures are regional in nature, does commercial usage exist in sufficient volumes in another BellSouth state to allow the Authority to determine that access to the processes, systems or procedures is being provided in a non-discriminatory manner.
4. For those processes, systems or procedures for which there is not sufficient commercial volumes in any BellSouth state, is there carrier-to-carrier testing upon which the Authority can rely in assessing the commercial readiness of BellSouth's OSS and whether BellSouth is providing access to OSS functions in a non-discriminatory manner.
5. For those processes, systems or procedures for which there is neither sufficient commercial volumes nor carrier-to-carrier testing, can the Authority rely on the results of third party testing in assessing the commercial readiness of BellSouth's OSS and whether BellSouth is providing access to OSS functions in a non-discriminatory manner.
6. For those processes, systems or procedures for which there is not sufficient commercial usage, carrier-to-carrier testing or third-party testing, can the Authority rely on the results of BellSouth internal testing in assessing the commercial readiness of BellSouth's OSS and whether BellSouth is providing access to OSS functions in a non-discriminatory manner.
7. Identify the processes, systems or procedures that should be included in a Master Test Plan for Tennessee designed to evaluate non-discriminatory access to OSS for both residential and business service as contemplated under 47 USC § 271 (c)(1)(A) of the Telecommunications Act of 1996, Tenn. Code Ann. §65-4-123 and other applicable state and federal statutes, that were not included in the Georgia or Florida Master Test Plan.
8. Based on evidence of commercial usage, carrier-to-carrier testing , or third-party testing, as appropriate, is BellSouth providing non-discriminatory access to OSS functions sufficient to satisfy Check List Item ii of the Telecommunications Act of 1996.

CERTIFICATE OF SERVICE

I hereby certify that on January 10, 2002, a copy of the foregoing document was served on counsel for known parties, via the method indicated, addressed as follows:

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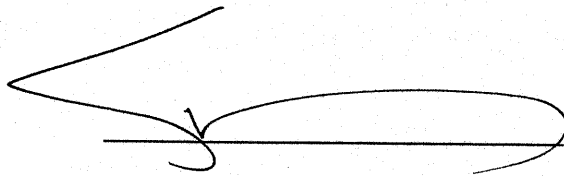
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A handwritten signature in black ink, appearing to be "Terry Monroe", written over a horizontal line.